

ESTTA Tracking number: **ESTTA695297**

Filing date: **09/11/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223088
Party	Defendant Liberty Mutual Insurance Company
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Date	09/11/2015
Attachments	CHIDMS1-#3554852-LMIC_Answer_to_Lytx_Notice_of_Opposition_DRIVE_CO ACH.pdf(30787 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LYTX, INC.

Opposer,

v.

LIBERTY MUTUAL INSURANCE
COMPANY

Applicant

Opposition No. 91223088

ANSWER TO NOTICE OF OPPOSITION

Applicant Liberty Mutual Insurance Company ("Applicant") answers Opposer Lytx, Inc.'s Notice of Opposition ("Opposition") as follows:

1. Liberty Mutual Insurance Company (herein called "Applicant") has filed an application to register "DRIVE COACH" for "a downloadable mobile device application that monitors and reports safe and unsafe driving behaviors" in IC009 and "Auto insurance administration and underwriting" in IC036. The application, Serial Number 86/496,558, filed on 1/6/2015 was filed as an Intent to Use application that does not allege a date of first use or first use in commerce. The mark was published for opposition on 6/2/2015, an extension to file the present opposition was granted, to expire on 8/3/2015. Lytx, Inc. (herein called "Opposer") is a Delaware corporation, having its principle place of business at 9785 Towne Center Drive, San Diego CA 92121, and has since at least as early as 2001 used its "DRIVECAM" mark, its "DRIVECAM ONLINE" mark, its "ONBOARD COACH" mark, and its "FLEXCOACH" mark in connection with the following goods and/or services:

Event data recorders. Video event recorders; computer software for analyzing data from video event recorders for use in the field of driver risk management, improving driver safety and reducing risky driving behavior; driving performance management software. (IC009)

Newsletter directed to driver risk management, improving driver safety and reducing risky driving behavior. (IC016)

Business risk management and mitigation services related to driver behavior provided via in-vehicle video, playback software, management of programs to improve driver safety, and reporting and expert event analysis to identify and eliminate behaviors known to increase the

likelihood of collision. Business consulting services related to workplace and driver safety, workplace and driver productivity, regulatory compliance, and workplace and driver operational risk events; Business consulting services in the field of business information and analytics, namely, electronic reporting of business information, namely, the detecting, classifying and reporting of safety, productivity and operational risk events Providing an on-line searchable computer database featuring business risk mitigation and management services related to driver behavior provided via in-vehicle video, playback software, program management, reporting and expert event analysis to identify and eliminate behaviors known to increase the likelihood of collision; Providing a website featuring information relating to business risk mitigation and management for identification of risky driving behavior. (IC035)

Financial risk management consulting services related to driver behavior. Financial risk management consulting services related to driver behavior, namely, management and reduction of the financial risk created by drivers by reducing risky driving behavior. (IC036)

Providing driving behavior management services, namely, driver safety counseling for the purpose of changing driver behavior through use of a driving feedback system. Educational services, namely, coaching services in the field of driver risk management, improving driver safety and reducing risky driving behavior; driver safety training. (IC041)

Computer services, namely, providing a website featuring information relating to computer systems and software for identification of risky driving behavior; Computer services, namely, hosting a website featuring identification of risky driving behavior; Computer services, namely, acting as an application service provider in the field of knowledge management to host computer application software for searching and retrieving information from databases and computer networks relating to risky driving behavior; Computer services, namely, providing online non-downloadable web-based software for use in the identification of risky driving behavior; processing of multimedia data, namely, interpreting collected audio, video, text and digital content and identifying segments that contain predefined key events, for review, analysis, and scoring of driver behavior and driving trends; providing temporary use of non-downloadable software for use in analyzing and scoring driving behavior. Processing of multimedia data, namely, interpreting collected audio, video, text and digital content and identifying segments that contain predefined key events, for review, analysis, and scoring of driver behavior and driving trends; providing a database of driver behavior and driver behavior analytics establishing a driver risk index and driver risk scores; providing temporary use of non-downloadable software for use in analyzing and/or scoring driving behavior. (IC042).

Providing a website featuring information in the field of accident investigations, namely, accident reconstruction analysis and reports; providing an on-line computer database in the field of accident investigations featuring accident reconstruction analysis and reports; Providing a website featuring information relating to accident investigations for identification of risky driving behavior. (IC045)

Registration/Serial No.

2,440,136

Trademark

DRIVECAM

3,945,407	DRIVECAM ONLINE
3,945,408	DRIVECAM ONLINE
3,941,571	DRIVECAM ONLINE
3,279,967	DRIVECAM
3,258,763	DRIVECAM
3,258,766	DRIVECAM
3,376,104	DRIVECAM
4,454,419	DRIVECAM (and design)
4,238,376	ONBOARD COACH
86/326,814	FLEXCOACH

ANSWER: Applicant admits only those allegations set forth in the first three sentences of Paragraph 1. Further answering, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations sets forth in Paragraph 1 of the Opposition.

2. Opposer produces, markets and installs video and event recorders in vehicles of others. Opposer further provides data analysis, reporting and consulting services related to the performance of drivers of vehicles having said video and event recorders therein. This equipment is specifically directed at reporting on, and ultimately reducing risky driving behavior for the purpose of reducing client cost due to driver risky driving behavior.

ANSWER: Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Opposition.

3. Opposer's goods and services in connection with which Opposer uses its "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks have achieved a reputation for excellence and high quality and have received wide acclaim over the years. Opposer's "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" have been, and continue to be, very popular within the market of driver safety and driver cost reduction. These marks have come to symbolize Opposer's goods and services.

ANSWER: Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Opposition.

4. Since 2001, Opposer has spent a substantial amount of money advertising and promoting its driver risk reduction goods and services under its "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks, which has resulted in goodwill of great value for its mark. As a result of Opposer's use of its "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks, these marks have become extremely well-known to the general public and the trade, and identifies and distinguishes the source and origin of Opposer's video event recorders and services related thereto. Opposer's "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks have become extremely valuable to Lytx, Inc. with substantial commercial appeal.

ANSWER: Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Opposition.

5. As a result of Opposer's long use of the "DRIVECAM" and "ONBOARD COACH" marks and the wide recognition achieved for the marks, these marks have become famous marks, and the public has come to associate these marks with goods or services originating with, emanating from, sponsored by, or otherwise associated with, or approved by, Opposer. Thus Applicant's use of "DRIVE COACH" on any type of goods or services related to drivers, driver performance reporting or the financial implications of risky driving behavior would dilute the distinctiveness of Opposer's "DRIVECAM" and "ONBOARD COACH" marks.

ANSWER: Applicant denies all of the allegations set forth in Paragraph 5 of the Opposition.

6. Applicant is not now and has never been authorized by Opposer to use the "DRIVE COACH" in connection with its products or services.

ANSWER: Applicant admits the allegations set forth in Paragraph 6 of the Opposition.

7. Upon information and belief, Applicant has adopted the "DRIVE COACH" in bad faith, with full knowledge of the prior use of the "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks, and with the intent to capitalize on the high name recognition and broad appeal of Opposer's marks.

ANSWER: Applicant denies all of the allegations set forth in Paragraph 7 of the Opposition.

8. Upon information and belief, Applicant has made no use in the United States or in interstate commerce of the "DRIVE COACH" before January 6, 2015. Upon information and belief, any alleged use by Applicant began after Opposer's "DRIVECAM" and "ONBOARD COACH" marks had become famous.

ANSWER: Applicant denies all of the allegations set forth in Paragraph 8 of the Opposition.

9. The primary features of Applicant's mark are identical to Opposer's mark and is likely, when applied to the goods/services of Applicant, to cause confusion, or to cause mistake, or to deceive the public into the mistaken belief that the goods offered and advertised by Applicant have their origin with Opposer, and that such goods are approved, endorsed, sponsored by, or in some way associated with, Opposer.

ANSWER: Applicant denies all of the allegations set forth in Paragraph 9 of the Opposition.

10. If Applicant is permitted to register "DRIVE COACH" for goods or services that the public believes are associated with Opposer, such registration would be likely to cause confusion, or to cause mistake or to deceive and would suggest falsely a connection with Opposer, causing great injury to Opposer.

ANSWER: Applicant denies all of the allegations set forth in Paragraph 10 of the Opposition.

11. Opposer would be injured by granting Applicant a certificate of registration for its "DRIVE COACH" mark, because its primary features are identical to Opposer's "DRIVECAM" and "ONBOARD COACH" marks, and the goods/services for which Applicant uses its mark are similar or related to the types of goods/services for which Opposer uses its "DRIVE COACH" mark and is likely, when applied to the goods/services of Applicant, to cause confusion, or to cause mistake, or to deceive and would suggest falsely a connection with Opposer.

ANSWER: Applicant denies all of the allegations set forth in Paragraph 11 of the Opposition.

12. Opposer would be injured further if such registration were granted to Applicant, because it would cause dilution of the distinctive quality of Opposer's famous "DRIVECAM" and "ONBOARD COACH" marks in violation of 15 U.S.C. §1125(c), and would damage Opposer's valuable rights in its "DRIVECAM" and "ONBOARD COACH" marks. Applicant

should not be permitted to usurp the value of Opposer's goodwill in its "DRIVECAM" and "ONBOARD COACH" marks in such a manner.

ANSWER: Applicant denies all of the allegations set forth in Paragraph 12 of the Opposition.

In view of the foregoing, Applicant Liberty Mutual Insurance Company requests that the Opposition be dismissed, that Application Serial No. 86/496,558 be passed to allowance and registration, and for such other relief as is warranted and equitable in the circumstances.

Date: September 11, 2015

/Rebecca B. Lederhouse/
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CERTIFICATE OF MAILING AND SERVICE

The undersigned certifies that the foregoing **ANSWER TO NOTICE OF OPPOSITION** is being filed electronically via the Electronic System for Trademark Trial and Appeal (ESTTA) with a copy sent via First Class Mail and email to:

Karl M. Steins
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on this 11th day of September, 2015

/Rebecca B. Lederhouse/
Rebecca B. Lederhouse